



January 30, 2017

Lea Anderson
Air and Radiation Law Office (2344A)
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460

VIA www.regulations.gov

**RE: Proposed Settlement of Challenge to Wyoming Regional Haze NO_x-BART
Emissions Limits for Laramie River Station Units 1-3, EPA-HQ-OGC-2016-0773**

Dear Ms. Anderson:

Pursuant to Clean Air Act (“CAA”) section 113(g), 42 U.S.C. § 7413(g), we submit these comments on behalf of National Parks Conservation Association, Powder River Basin Resource Council, Sierra Club, and Wyoming Outdoor Council (collectively, “Conservation Organizations”) regarding the U.S. Environmental Protection Agency’s (“EPA”) proposal to settle certain claims challenging its Wyoming Regional Haze federal implementation plan.¹ As described below, the Conservation Organizations are concerned that the proposed settlement, which would relax BART emissions limits for haze-causing nitrogen oxide (NO_x) and sulfur dioxide pollution for Laramie River Station Units 1-3, will not achieve the level of visibility improvement mandated by the CAA’s regional haze provisions, 42 U.S.C. § 7491. The Conservation Organizations urge EPA to reject the proposed settlement and maintain the BART requirements for Laramie River Station set forth in EPA’s federal implementation plan. *See* Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze, 79 Fed. Reg. 5,032 (Jan. 30, 2014) (“Final Rule”).

¹ EPA’s notice of the proposed settlement indicates that it “will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question.” Notice of proposed settlement agreement; request for public comment, 81 Fed. Reg. 96,450 (Dec. 30, 2016). Although the Conservation Organizations are parties to the Wyoming Regional Haze litigation, they are not parties to the proposed settlement agreement. Accordingly, EPA should consider and respond to these comments.

NOR THER NR OCKI ES OF FICE 313 EA STM AINS TR EET B OZEM AN, M T59 71 5

T: 406. 58 6. 969 9 F : 406. 586. 969 5 NR OF FICE@EA RTHJ US TI CE. OR G W WW .EAR THJ US TI CE. OR G

ED_001512_00013519-00001

The CAA calls for the elimination of human-caused haze pollution that mars vistas at our nation's most treasured public lands—including National Parks such as Yellowstone and Badlands and wilderness areas nationwide. *See* 42 U.S.C. § 7491(a)(1). As the first major step toward restoring natural visibility, states are required to identify emission limits that reflect installation of the “Best Available Retrofit Technology,” or “BART,” at major stationary sources of haze pollution that began operating between 1962 and 1977 and have an adverse impact on visibility in a Class I area of 0.5 deciview or more. *Id.* § 7491(b)(2); 40 C.F.R. pt. 51, App. Y.² Because of their age and scale, BART sources make an outsized contribution to the regional haze problem. *See, e.g.,* Proposed Rule, Regional Haze Regulations, 62 Fed. Reg. 41,138, 41,149 (July 31, 1997) (“The provisions in the Act requiring BART appear to demonstrate Congress’ intention to focus attention on this specific set of large existing sources, which are minimally controlling emissions, as possible candidates for emissions reductions needed to make reasonable progress toward the national visibility goal.”). Therefore, focusing on “the best system of continuous emission reduction” for these sources, 40 C.F.R. § 51.301, is essential to eliminating human-caused haze.

Although EPA regulations allow states to propose alternatives to BART, EPA may only approve such alternatives if they achieve “greater reasonable progress” toward eliminating visibility impairment than would implementation of BART. 40 C.F.R. § 51.308(e); *see Ctr. for Energy and Economic Devel. v. EPA*, 398 F.3d 653, 660 (D.C. Cir. 2005) (holding that 42 U.S.C. § 7491(b)(2) requires application of BART unless a BART-alternative program “would achieve greater progress than BART”).

Basin Electric’s Laramie River Station, in Platte County, Wyoming, consists of three large (550 MW) coal-burning units. Proposed Rule, Wyoming Regional Haze State Implementation Plan, Federal Implementation Plan, 78 Fed. Reg. 34,738, 34,753 (June 10, 2013). Because the plant’s NO_x pollution contributes substantially to visibility impairment at a number of Class I areas—particularly Badlands, Wind Cave, and Rocky Mountain National Parks and Rawah Wilderness—it is subject to the CAA’s stringent BART-retrofit provisions. *See id.* at 34,748, 34,775.

In the Final Rule, EPA identified selective catalytic reduction (“SCR”) technology—the most stringent NO_x-control technology available—as BART. In EPA’s words, its determination “was thoughtful, consistent with applicable statutory and regulatory requirements, and well-supported by the administrative record.” *Wyoming, et al. v. U.S. Env’tl. Protection Agency*, Nos. 14-9529, 14-9530, 14-9533, 14-9534, Final Brief of Respondent, at 38 (10th Cir., filed Mar. 16, 2015). Specifically,

² A deciview is a measured unit of visibility. 40 C.F.R. § 51.301.

EPA found that the addition of SCR resulted in a significant improvement on visibility at the most impacted Class I area on both a source-wide (1.62 deciviews) and unit -specific (0.52-0.57 deciviews) level. Final Rule, 79 Fed. Reg. at 50,047 (Table 18). The incremental visibility improvement of LNB/OFA plus SCR was approximately twice that of SNCR, further supporting EPA's selection of the most stringent control. *Id.* at 5,047. The average cost effectiveness per unit (\$4,375 to \$4,461/ton) and incremental cost effectiveness (\$5,449 to \$5,871/ton) were also in line with other FIPs and were deemed particularly reasonable given the significant visibility improvement provided by LNB/OFA with the addition of SCR. *Id.* at 5047.

Id. at 151.


The Conservation Organizations believe that the proposal to replace the appropriate, BART-based emissions limits in the Final Rule with less-stringent limits called for in the settlement will not satisfy the regulatory requirement that BART alternatives achieve "greater reasonable progress" toward eliminating visibility impairment than would implementation of BART. 40 C.F.R. § 51.308(e). However, because EPA has not yet publicly disclosed any analysis that compares the visibility benefits of BART and the BART alternative proposed in the settlement agreement, the Conservation Organizations are unable to fully comment on the legality or appropriateness of EPA's proposal. If EPA finalizes the settlement, we expect EPA to thoroughly and rationally support its better-than-BART finding. The Conservation Organizations will closely scrutinize EPA's analysis and provide comment on the proposed rule.

The Conservation Organizations are also concerned that the proposed settlement allows the parties to the settlement to seek further delay in judicial resolution of all challenges to the portions of the Final Rule that are distinct from the Laramie River Station BART determinations. In addition to Basin Electric and Wyoming's challenges of the Laramie River Station BART determinations, Wyoming and PacifiCorp raised challenges related to EPA's BART determinations for two other coal-fired power plants—Wyodak and Dave Johnston Unit 3. Emissions reductions required under the Final Rule for all of these units are stayed pending the resolution of these consolidated challenges. Further, Powder River Basin Resource Council, National Parks Conservation Association, and Sierra Club have challenged as insufficiently stringent EPA's BART determinations for Naughton Units 1 and 2, as well as EPA's decision to forego limitations on haze-causing emissions from the oil and gas industry and EPA's failure to establish reasonable progress goals for Wyoming as required by EPA's regulations. All of these challenges were filed nearly three years ago and have been fully briefed for almost two years. Their resolution should not be delayed

by an additional two years as a result of EPA's unrelated settlement of challenges to the Laramie River Station BART requirements. The Conservation Organizations urge EPA to take steps to ensure these separate legal challenges proceed without further delay. In addition, and at a bare minimum, EPA should ask the Tenth Circuit Court of Appeals to lift the stay of EPA's well-supported BART requirements so that statutorily mandated emissions reductions are not unnecessarily and unjustifiably deferred.

Please do not hesitate to contact us should you wish to discuss this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Jenny Harbine".

Jenny Harbine
Katherine O'Brien

John Barth, Attorney at Law
P.O. Box 409
Hygiene, Colorado 80533

*Counsel for Powder River Basin Resource
Council, Sierra Club, National Parks
Conservation Association, and Wyoming
Outdoor Council*